APPENDIX A

United States Court of Appeals

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the first day of August one thousand nine hundred and sixty-two.

Present—Hon. CHARLES E. CLARK,
Hon. J. JOSEPH SMITH,
Hon. IRVING R. KAUFMAN, *Circuit Judges.*

FIRST CONGREGATIONAL CHURCH AND SOCIETY OF BURLINGTON, IOWA, *et al.*, suing on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

EVANGELICAL AND REFORMED CHURCH, *et al.*,

Defendant-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

by VINCENT A. CARLIN
Chief Deputy Clerk

A true copy,
A. DANIEL FUSARO
Clerk

United States Court of Appeals
Second Circuit
Filed August 1, 1962
A. DANIEL FUSARO, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 320—September Term, 1961.

(Argued May 10, 1962 Decided August 1, 1962.)

Docket No. 27258

FIRST CONGREGATIONAL CHURCH AND SOCIETY OF BURLINGTON, IOWA, *et al.*,

Plaintiffs-Appellants,

EVANGELICAL AND REFORMED CHURCH *et al.*,

Defendants-Appellees.

Before: CLARK, SMITH, and KAUFMAN, *Circuit Judges.*

Appeal from the United States District Court for the Southern District of New York, Edward J. Dimock, *Judge.*

Plaintiffs appeal from the dismissal on the ground of *res judicata* of their representative action for declaratory and other relief based on the claimed invalidity of an agreement of union between the Congregational Christian Churches and the Evangelical and Reformed Church. See D. C. S. D. N. Y., 198 F. Supp. 677. Affirmed.

See also D. C. S. D. N. Y., 160 F. Supp. 651; 21 F. R. D. 325.

Appendix B

CLARK, *Circuit Judge:*

Plaintiffs-appellants appeal from a decision of the district court dismissing their complaint on the grounds that all the matters stated therein had been previously adjudicated against all the plaintiffs and all classes of parties represented by them in a final adjudication by the New York Court of Appeals in *Cadman Memorial Congregational Soc. of Brooklyn* v. *Keegan*, 306 N. Y. 151, 116 N. E. 2d 481. Plaintiffs had sought declaratory and other relief below, based upon the asserted invalidity of a far-reaching agreement of church union. Judge Dawson ordered the case to trial in denying summary judgment, D. C. S. D. N. Y., 160 F. Supp. 651;[1] thereafter Judge Dimock ordered a separate trial of the issue of *res judicata* and collateral estoppel; upon such trial he found for the defendants, see D. C. S. D. N. Y., 198 F. Supp. 677, and eventually entered the judgment appealed from. We here affirm that judgment.

This litigation has been protracted and acrimonious. It arose from the historic decision made by the defendant General Council of the Congregational Christian Churches of the United States to enter into a union with the defendant Evangelical and Reformed Church to form the United Church of Christ. After lengthy study and negotiation a group representing the Evangelical and Reformed Church and a commission appointed by the General Council met and adopted a document called the Basis of Union, which set forth the procedures to govern the proposed merger. In 1949, concluding that the merger had the approval of a

[1] In *First Cong. Church and Society of Burlington, Iowa* v. *Evangelical and Reformed Church*, D. C. S. D. N. Y., 21 F. R. D. 325, Judge Dawson denied the application of yet other interests to intervene as parties plaintiff.

sufficient percentage of the adherents of the Congregational Christian faith, the General Council voted to consummate the Union; and a similar decision was made by the Evangelical and Reformed Church.

The General Council's determination to consummate the merger is strenuously opposed by many of the Congregational Christian Churches. The nonassenting group believes that the proposed United Church of Christ represents a drastic change from the traditional polity of the Congregational Christian Churches. Since their origin in this country in 1620 these have been independent, self-governing fellowships without any central ecclesiastical control. These independent fellowships have, however, established certain regional associations and a national council, the defendant General Council of the Congregational Christian Churches of the United States. Also established on a national scale were the various boards, agencies, and corporations which are defendants to this action. Typical of these are the American Board of Commissioners for Foreign Missions, denominated "the agency of the Congregational Christian Churches for the extension of Christ's kingdom abroad," and The Annuity Fund for Congregational Ministers, a corporation whose purposes are obvious. These organizations administer substantial financial assets. And of course each Congregational Christian Church owns church property the sum total of which runs into hundreds of millions of dollars.

The nonassenting churches believe that the merger would destroy or substantially alter the nature of Congregationalism. The United Church of Christ, it is contended, will be organized on presbyterian lines, as an authoritative church governed by ecclesiastical bodies with sovereignty over the

constituent churches, members, and ministers. The nonassenters maintain that the General Council, which they believe to be an agency possessing only very limited delegated powers, lacked any authority to commit the Congregational Christian Church to any merger with another church. Thus they contend that the Basis of Union is wholly unauthorized. The nonassenters also assert that this unauthorized act by the Council commits all members of the Congregational Christian denomination to membership in the United Church of Christ, and it is claimed that if the nonassenters choose to remain outside that body they will be deprived of their rights in the assets held by the General Council, the funds, and agencies.

To halt this development, one of the nonassenting groups, the Cadman Memorial Society of Brooklyn and the Cadman Memorial Church, brought suit in 1949 against Helen Kenyon, the Moderator of the General Council. This suit, which was filed in the Supreme Court of New York State, was brought "on behalf of themselves and other Congregational Churches similarly situated." The Cadman Church and Society requested a declaratory judgment that the General Council had no power to consummate the Basis of Union or to unite with the Evangelical and Reformed Church; that no acts taken by the General Council can or will affect individual Congregational Christian Churches without their voluntary assent; that those churches which do join the new church will thereby lose all rights in and control of the various corporations, boards, and instrumentalities which had been established for the furtherance of Congregationalism. Cadman also prayed for an injunction halting the merger of the churches and the consolidation of the corporations, boards, and agencies with their counterparts in the Evangelical and Reformed Church.

Appendix B

The state supreme court granted Cadman's pleas, declaring that the General Council was powerless to consummate the Basis of Union and enjoining any further actions in that direction. The court specifically enjoined the Council from uniting or transferring the corporations, agencies, and instrumentalities of the Congregational Christian Churches, or their funds and properties, with or to any agency of the Evangelical and Reformed Church or the United Church of Christ. *Cadman Memorial Congregational Soc. of Brooklyn* v. *Kenyon*, 197 Misc. 124, 95 N. Y. S. 2d 133 (1950). On appeal, the Appellate Division reversed the judgment of the supreme court on the law and the facts, and ordered the plaintiffs' complaint dismissed. 279 App. Div. 1015, 1074, 111 N. Y. S. 2d 808 (1952). This judgment was affirmed in a full opinion by the New York Court of Appeals, two judges dissenting. 306 N. Y. 151, 116 N. E. 2d 481 (1953).

Subsequently on June 20, 1957, this action was commenced in the United States District Court for the Southern District of New York. The plaintiffs are other nonassenting churches, ministers, members of churches, and members of the various boards and agencies of the Congregational Christian Church. Defendants are the Evangelical and Reformed Church, the Treasurer of the General Council, the several boards, agencies, and corporations, and the co-President of the United Church of Christ. Because determination of the precise nature of the relief requested by plaintiffs is crucial to a resolution of the issues raised on this appeal, we find it necessary to set out at some length the gist of the voluminous and repetitive complaint.

The prayer for relief requests certain specific declarations to be made; these fall into several general classes. The first of these in essence ask for declarations that the Basis of Union is invalid, that the General Council lacked

power to enter into the Union, and that the General Council could not merge or consolidate the agencies, boards, and corporations of the Congregational Christian Churches with those of the Evangelical and Reformed Church. The second class are requests for declarations that the statements in the Basis of Union that the ministers and members of each communion shall be enrolled in the United Church of Christ, and that the individual churches shall become members of that Church, are invalid and void. A third class are requests for declarations of the invalidity of the provisions of the Basis of Union purporting to alter the status of the General Council, agencies, and corporations by merging these with any similar bodies of the Evangelical and Reformed Church. A fourth class ask for declarations that the General Council cannot by its own act bring any individual church into the United Church of Christ, make any individual a member of the United Church of Christ, or enroll any minister as a minister of the new church. The final class of requested declarations are that no minister shall be required to withdraw "from the fellowship of the Congregational Christian Churches"; that the churches, ministers, and members may not "be deprived of their rights in and to the assets, properties and organizations of the Congregational Christian agencies and instrumentalities * * * by reason of their remaining Congregational Christian Churches, ministers and members instead of becoming part of the 'United Church of Christ.'" Further declarations are asked to the effect that the agencies and instrumentalities may not unite with agencies of the Evangelical and Reformed Church, or with the United Church of Christ. Upon the separate trial ordered by Judge Dimock on defendants' affirmative defenses of *res judicata* and collateral estoppel

and after long hearings, Judge Dimock in an extensive reasoned opinion granted defendants' motion to dismiss this complaint and thereafter entered the judgment of dismissal here under appeal.

The issues raised by the appeal can be stated very simply: What was decided by the New York courts in the *Cadman* litigation? and who is bound by that determination under principles of *res judicata*? Plaintiffs maintain that the *Cadman* judgment cannot affect them, because they were not parties in that action and were neither in privity with nor represented by either of the two plaintiffs. They also maintain that the defendants in the present suit are not the same as those in *Cadman* and thus cannot plead that judgment in bar. Finally, plaintiffs contend that the dismissal of the *Cadman* complaint was solely for failure to join indispensable parties—a flaw they claim to have corrected. Since jurisdiction in this suit is grounded on diversity of citizenship, we look of course to the law of New York to determine these issues.

The first question is whether plaintiffs, who were not named parties in the *Cadman* suit, may under applicable principles of *res judicata* be bound by the New York decision. New York, as most jurisdictions, permits representative actions to be brought by one or more members of a class of persons having common interests on behalf of the entire class. If the representation is adequate the determination in such a representative suit is binding on all members of the class. *Brunch* v. *Title Guarantee & Trust Co.*, 276 N. Y. 230, 11 N. E. 2d 899, 114 A. L. R. 1010. Defendants maintain, and the trial court found, that the *Cadman* action was such a representative suit and that the present plaintiffs, having common interests with the Cadman

Church and Society, and adequately represented by them, are bound by the judgment rendered by the New York Court of Appeals. Plaintiffs, on the other hand, point to a variety of differences between their situation and that of the two *Cadman* plaintiffs which they say take them out of the class properly represented in that action. Among the more crucial of these differences are that, unlike the Cadman Church and Society, some of the churches that bring this action have property which is subject to mortgages held by defendant The Congregational Church Building Society, and that here are joined ministers and individual church members, while there were no such parties represented in *Cadman*.

To bind members of a class not named as parties to a suit, a representative action must fulfill certain prerequisites. All members of the class must be necessary—indispensable—parties to the suit; that is, their interests in its outcome must be joint or common so that the rights of all are necessarily affected by any action brought by one or more. *Brenner* v. *Title Guarantee & Trust Co.*, *supra*, 276 N. Y. 230, 11 N. E. 2d 890, 114 A. L. R. 1040. Where such a community of interests exists, a class suit will nevertheless not bind absent members of the class if the named parties or representatives actually have interests in the outcome of litigation adverse or not necessarily similar to those of all members of the class. *Hansberry* v. *Lee*, 311 U. S. 32, 132 A. L. R. 741. The question whether in a particular suit the interests of an entire class are common and the representative shares then will depend on the specific issues raised and decided in that litigation. See *Brenner* v. *Title Guarantee & Trust Co.*, *supra*, 276 N. Y. 230, 11 N. E. 2d 890, 114 A. L. R. 1040. Thus to decide whether

plaintiffs were or could be represented in the *Cadman* litigation, we must also determine what the New York courts decided there.

It is our conclusion that as to the issues actually raised and resolved by the New York Court of Appeals in *Cadman*, the plaintiffs therein and the present plaintiffs form one class having common interests, and all were adequately represented by the Cadman Church and Society. Since no legal issue not determined by *Cadman* is raised by the present complaint, the judgment of the district court dismissing plaintiffs' complaint must be affirmed.

(1) Both the *Cadman* plaintiffs and the plaintiffs here requested declarations that the General Council is powerless to effectuate the Union and thus the Basis of Union is invalid. Both also asked for declarations that the General Council cannot by its own act unite the individual Congregational Christian Churches with the United Church of Christ. In *Cadman*, the New York Court of Appeals faced this issue and indicated that, at least as far as the civil courts could examine the question, the acts of the General Council were wholly proper. That court stated that "there is no power and none is claimed by which the General Council can compel or intends to compel the plaintiff Cadman or any other nonassenting church to join the Union unwillingly or impose upon them a change of faith or doctrine," and affirmed the validity of the Basis of Union. *Cadm. Memorial Congregational Soc. at Brooklyn v. Kennon*, *supra*, 306 N. Y. 151, 163, 115 N. E. 2d 481, 485. (It should be noted that even the dissenters in the New York Court of Appeals agreed that the General Council was authorized to enter into the merger and implement

the Basis of Union.) The questions of the validity of the General Council's action and its effect on individual congregations were legal issues in which all the present plaintiffs have the same interest as the *Cadman* plaintiffs and to which the differences in their various situations are irrelevant; and thus as to these questions the decree is binding on all.[2]

(2) Both in *Cadman* and in this case plaintiffs requested rulings that the merger of the boards, agencies, and corporations of the Congregational Christian Church was unlawful. The New York Court of Appeals pointed out that all the funds which were contributed to these charitable entities were given in the form of voluntary donations to be used by the corporations for their general purposes. It ruled that in such a case the civil courts can only scrutinize the expenditure of funds to determine if the use is not violative of charter purposes. Finding neither any direct interest of the plaintiffs in the funds nor any charter violations, it concluded that the complaint should be dismissed. Since the plaintiffs here, as the district court found, also all have made only voluntary contributions, if any, and no further charter violations are shown, the present plaintiffs were clearly members of the class represented by the Cadman Church and Society for purposes of resolving the status of the boards and agencies, and are bound by that decision.

(3) There remains the request made by the present plaintiffs for a declaration that ministers, members, and

[2] While it is not wholly clear from the Court of Appeals decision whether it upheld the Basis of Union on the merits or because the question of its invalidity was beyond the cognizance of the civil courts, it would make no difference to resolution of the issues presented here which of these grounds of decision was in fact adopted.

nonassenting churches may not be deprived of their rights in the assets, properties, and organizations of the Congregational Christian agencies and instrumentalities. If they could show some right or interest adverse or dissimilar to that of the *Cadman* plaintiffs in these assets, etc., the present plaintiffs might prevail in their claim that the Cadman Church and Society could not adequately represent them in the litigation of such an issue. They have, however, made no such showing. While they point to certain differences of interest, no showing is made that these differences give plaintiffs here a claim or right to a declaratory judgment different from that asserted by *Cadman*. And while such a separate claim or right might arise if, for example, a mortgage were foreclosed or a pension denied because of refusal to join the United Church of Christ, we cannot on the present record ascertain any imminently threatened interest which the present plaintiffs possess which so differentiates them from the *Cadman* plaintiffs, in terms of the issues there decided, that the *Cadman* plaintiffs could not adequately represent *all* the varying nonassenters.

The final point raised is whether those defendants in this case who were not parties in *Cadman* may plead that decree as *res judicata*. Since all the defendants herein have the same interests as the General Council, which defended the *Cadman* litigation, they under the law of New York may claim the benefit of that decision, even if they may not be made to bear its burdens. *Israel* v. *Wood Dolson Co.*, 1 N. Y. 2d 116, 134 N. E. 2d 97, 151 N. Y. S. 2d 1; *Gart* v. *Cole*, 2 Cir., 263 F. 2d 244, certiorari denied 359 U. S. 978.

Affirmed.

APPENDIX C

Judgment Entered Upon Reversal by Appellate Division

SUPREME COURT OF THE STATE OF NEW YORK,

KINGS COUNTY.

CADMAN MEMORIAL CONGREGATIONAL SOCIETY OF BROOKLYN and THE CADMAN MEMORIAL CHURCH, suing on behalf of themselves and other Congregational Christian Churches similarly situated,

Plaintiffs-Respondents,

against

HELEN KENYON, as Moderator of the General Council of the Congregational Christian Churches of the United States,

Defendant-Appellant.

The defendant-appellant having appealed to the Appellate Division of the Supreme Court of the State of New York, Second Department, from a judgment of the Supreme Court, Kings County, in favor of the plaintiffs-respondents and against the defendant-appellant, entered in the Office of the Clerk of the County of Kings on the 21st day of February, 1950, and said Appellate Division having by on order, as amended upon motion of the Court and entered on May 5th, 1952, in the Office of the Clerk of the said Appellate Division (a certified copy of which amended order was duly entered and filed together with the remittitur in the Office of the Clerk of the Supreme Court

of the State of New York, County of Kings, on the 7th day of May, 1952, ordered that the judgment so appealed from be reversed on the law and the facts, with costs, and plaintiffs' complaint and defendant's counterclaim dismissed, with costs to the defendant; and by said amended order having ordered that findings of fact expressed and implied, inconsistent with its opinion and decision slips be reversed, except such findings as were made expressly or by implication, upon questions of doctrine, polity and other ecclesiastical matters, which matters were not considered by said Appellate Division and as to which it has made no determination; and the costs of the defendant-appellant having been duly taxed at the sum of $6,058.00; it is

ADJUDGED that the judgment so appealed from, be and the same is hereby reversed on the law and the facts, and plaintiffs' complaint and defendant's counterclaim dismissed; and it is

FURTHER ADJUDGED that the plaintiffs' complaint be and the same hereby is dismissed; and it is

FURTHER ADJUDGED that the defendant's counterclaim be and the same hereby is dismissed; and it is

FURTHER ADJUDGED that the defendant-appellant, Helen Kenyon, as Moderator of The General Council of the Congregational Christian Churches of the United States, of 287 Fourth Avenue, Borough of Manhattan, City and State of New York, do recover of the plaintiffs-respondents, Cadman Memorial Congregational Society of Brooklyn and The Cadman Memorial Church, of 350 Clinton Avenue, in the Borough of Brooklyn, City and State of New York,

suing on behalf of themselves and other Congregational Christian Churches similarly situated, the sum of $6,058.00 costs, and that said defendant-appellant have execution therefor.

Judgment signed and entered this 3rd day of June, 1952.

FRANCIS J. SINNOTT,
Clerk.

Filed & Rec.
Time 12:50 P. M.
June 3, 1952
Kings County Clerk's Office

APPENDIX D

COURT OF APPEALS.

State of New York, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 3rd day of December in the year of our Lord one thousand nine hundred and fifty-three, before the Judges of said Court.

Witness,

The Hon. Edmund H. Lewis,
Chief Judge, Presiding.
Raymond J. Cannon, Clerk.

Remittitur December 3, 1953

No. 338

CADMAN MEMORIAL CONGREGATIONAL SOCIETY OF BROOKLYN, & ano., &c.,

Appellants,

vs.

HELEN KENYON, as Moderator of the General Council of the Congregational Christian Churches of the United States.

Respondent.

BE IT REMEMBERED, That on the 3rd day of November in the year of our Lord one thousand nine hundred and

fifty-two, Cadman Memorial Congregational Society of Brooklyn, & ano., &c., the appellants in this cause, came here unto the Court of Appeals, by Davies, Hardy, Schenck & Sons, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And Helen Kenyon, as Moderator of The General Council of the Congregational Christian Churches of the United States, the respondent in said cause, afterwards appeared in said Court of Appeals by Wood, Mollox, France & Tully, her attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Messrs. Kenneth W. Greenawalt and Joseph Diehl Fackenthal, of counsel for the appellants, and by Mr. Charles H. Tuttle, of counsel for the respondent, briefs filed by *amici curiae*, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of

the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

s/ RAYMOND J. CANNON
Clerk of the Court of Appeals of
the State of New York.

Court of Appeals, Clerk's Office
Albany, December 3, 1953

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

s/ RAYMOND J. CANNON
Clerk.

APPENDIX E

Judgment of Supreme Court, Kings County, Entered on Its Order of December 16, 1953

The above named plaintiffs having appealed to the Court of Appeals of the State of New York from the judgment entered in the office of the Clerk of the County of Kings on the 3rd day of June, 1952 upon the order of the Appellate Division of the Supreme Court, Second Department, entered in the office of the Clerk of said Appellate Division on the 14th day of April, 1952, as amended by an order of said Appellate Division entered in the office of the Clerk of said Appellate Division on the 5th day of May, 1952, reversing the judgment in favor of the plaintiffs and against the defendant heretofore entered herein in the office of the Clerk of the County of Kings on the 21st day of February, 1950, which said judgment entered in the office of the Clerk of the County of Kings on the 3rd day of June, 1952, dismissed plaintiffs' complaint and defendant's counterclaim and further adjudged that the defendant recover from the plaintiffs the sum of Six Thousand and Fifty-Eight Dollars ($6,058.00) costs and that defendant have execution therefor; and the said appeal having been duly argued at the Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the judgment so appealed from be affirmed without costs in the Court of Appeals, and having further ordered and adjudged that the proceedings herein be remitted to this Supreme Court there to be proceeded upon according to law; and the remittitur from the Court of Appeals having been filed herein, and an order having been entered herein on the 16th day of

Appendix E

December, 1953 making the order and judgment of the Court of Appeals the order and judgment of this Court:

Now on motion of Wood, Molloy, France & Tully, attorneys for the defendant herein, it is hereby

ADJUDGED that the order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court; and it is further

ADJUDGED that the judgment entered herein on the 3rd day of June, 1952, be and the same hereby is affirmed.

Judgment signed and entered this 25th day of January, 1954.

FRANCIS J. SINNOTT
Clerk

Filed & Rec.
Time 2H20M
Jan 25 1954
Kings County, Clerks Office

APPENDIX F

U. S. Const. amend. V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. Const. amend. XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Declaratory Judgment Act, 28 U. S. C. §2201:

Creation of remedy:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Appendix F

N. Y. Const. art. VI §7:

> The jurisdiction of the court of appeals shall be limited to the review of questions of law except where the judgment is of death, or where the appellate division, on reversing or modifying a final or interlocutory judgment in an action or a final or interlocutory order in a special proceeding, finds new facts and a final judgment or a final order pursuant thereto is entered; but the right to appeal shall not depend upon the amount involved. * * *

N. Y. Civil Practice Act §193; Indispensable and conditionally necessary parties:

> 1. A person whose absence will prevent an effective determination of the controversy or whose interests are not severable and would be inequitably affected by a judgment rendered between the parties before the court is an indispensable party. A person who is not an indispensable party, but who ought to be a party if complete relief is to be accorded between those already parties is a conditionally necessary party.
>
> 2. When it appears that an indispensable party has not been joined, the court shall order such party brought in. If a party fails or neglects to bring in an indispensable party after a reasonable period granted to him to do so, the court shall dismiss the action without prejudice. When it appears that a conditionally necessary party has not been joined, the court shall order such party to be brought in if he is subject to the jurisdiction of the court and can be brought in without undue delay. The court in its discretion may proceed in the action without a conditionally necessary party if his addition would cause un-

due delay or if jurisdiction can be acquired over him only by his consent or voluntary appearance. If a party fails or neglects to bring in a conditionally necessary party, after a reasonable period granted to him to do so, the court may in its discretion dismiss the action without prejudice.

3. The provisions of this section shall be applicable to all actions whether formerly denominated legal or equitable.

N. Y. Civil Practice Act §473. Declaratory judgments:

The supreme court shall have power in any action or proceeding to declare rights and other legal relations on request for such declaration whether or not further relief is or could be claimed, and such declaration shall have the force of a final judgment. Such provisions shall be made by rules as may be necessary and proper to carry into effect the provisions of this section.

N. Y. Rules of Civil Practice, Rule 211:

Rule 211. Prayer for relief. The prayer for relief in the complaint shall specify the precise rights and other legal relations of which a declaration is requested and whether further or consequential relief is or could be claimed. If further relief be claimed in the action, the nature and extent of such relief shall be stated.

New York Civil Practice Act §472. Definition of Judgment:

A judgment is the determination of the rights of the parties in an action, and may be either interlocutory or final.